

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MICHAEL SPILLINO,

Petitioner,

v.

BRIAN BELLEQUE,

Respondent.

No. CV 05-1953-HU

OPINION AND ORDER

MOSMAN, J.,

On January 26, 2009, Magistrate Judge Hubel issued Findings and Recommendation ("F&R") (#37) in the above-captioned case recommending that I DENY petitioner's Amended Petition for Writ of Habeas Corpus (#14) and DISMISS this proceeding with prejudice. Plaintiff filed objections (#41).

DISCUSSION

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a *de novo* determination of those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are

addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any of the magistrate judge's F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I agree with Judge Hubel's recommendation, and I ADOPT the F&R (#37) as my own opinion.

IT IS SO ORDERED.

DATED this 5th day of March, 2009.

/s/ Michael W. Mosman
MICHAEL W. MOSMAN
United States District Court